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President and CEO

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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BY E-MAIL AND HAND DELIVERY

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: Reply Comments
In the Matter of Rules and Regulations Implementing the Telephone Consumer
Protection Act ("TCPA") of 1991, CG Docket No. 02-278

Dear Ms. Dortch:

The Newspaper Association of America ("NAA") is pleased to submit this reply comment to supplement its previous comment in this proceeding. NAA and its members urge the Federal Communications Commission ("FCC" or "Commission") to take a national leadership position on telemarketing policy by adopting a carefully measured approach to this issue that both respects the wishes of the U.S. public and countervails the trend toward regulations that would harm the efforts of newspapers and other businesses that engage in responsible telemarketing practices. NAA believes that the FCC not only has the expertise and statutory authority to create this new paradigm for state and federal regulators, it is perfectly positioned among regulators to take this badly needed leadership role.

Sensible regulation of telemarketing is important to the fiscal health of newspapers. Similarly, as well articulated by other industry members, large segments of the economy are dependent on telemarketing. Newspapers use telemarketing responsibly, not only to comply with applicable law, but also to best serve their customers. The very low rates at which consumers request placement on newspapers' internal do-not-call lists — often less than four percent of persons called — reflects the fact that consumers often do not mind newspaper telemarketing.

Legitimate telemarketing is increasingly hamstrung, however, by the haphazard patchwork of telemarketing regulations. Indeed, NAA believes that the do-not-call rules recently adopted by the Federal Trade Commission ("FTC"), in combination with existing state do-not-call restrictions, create substantial inefficiencies for telemarketers of all sizes, who must

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contend with burdensome and inconsistent obligations. In addition, these do-not-call programs unduly inhibit consumer access to products and services.

Moreover, the dubious authority upon which such regulation is promulgated or enforced creates considerable legal uncertainty for businesses. For example, the FTC may have exceeded its statutory authority when issuing its do-not-call rules and predictive dialer restrictions, provoking years of litigation during which the applicable rules will remain unclear. Meanwhile, states are increasingly seeking to apply their do-not-call rules for *interstate* telemarketing calls to in-state residents. Not only do these trends improperly restrict interstate commerce, these restrictions on commercial speech are highly vulnerable to a challenge on First Amendment grounds.

Only telemarketing rules issued by the Commission can avoid the inefficiency and uncertainty introduced by the states and the FTC in this area. The FCC should act on its clear authority granted in the TCPA to enforce nationwide a uniform, balanced telemarketing policy, developed in consultation with the FTC and the states.

As part of this leadership position, the Commission should again reject the notion of a national do-not-call database due to the program's excessive cost and administrative burdens. Instead, the FCC should actively enforce the current, company-specific do-not-call rules, and, if necessary, enhance them to further support consumer preferences. Any revision to the rules should reduce the ten-year duration of a do-not-call request to three years in order to reflect the rapid turnover in residential phone numbers.

In addition, NAA and its members believe that the FCC should support the Telephone Preference Service ("TPS") managed by the Direct Marketing Association. The TPS allows consumers to stop telemarketing calls from DMA members by signing up online or by mail, and could be revised to enable consumers to subscribe by phone. By encouraging widespread use of the industry system, the Commission immediately could advance a much less expensive method for managing unwanted telemarketing calls, and lessening the cost and administrative burden for government, industry and consumers.

If the Commission ultimately adopts a national do-not-call rule, it should act on authority granted in the TCPA to exempt newspapers. Newspapers are overwhelmingly local businesses, in many cases with a decades- or even century-long history of serving community interests. Congress clearly recognized that newspapers serve important public interests when it identified exemptions to do-not-call requirements in the TCPA. Accordingly, the FCC should apply only the current, company-specific do-not-call rules to newspaper telemarketing.

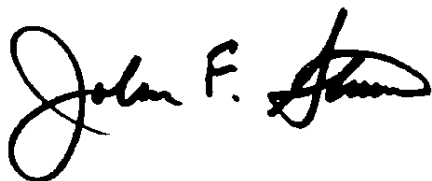
At the very least, if the FCC does not exempt newspapers, it should extend its existing "established business relationship" exemption to any national do-not-call program. In contrast with its counterpart in the FTC's recently released do-not-call rule, the FCC's established business relationship exemption imposes no arbitrary expiration date after which

a business may no longer contact its customers. NAA supports the existing FCC framework that gives customers the power to block telemarketing calls at any time by requesting a company-specific do-not-call listing. This framework is essential for newspapers to continue relationships with individuals who, in many cases, have already demonstrated their interest in subscribing to a newspaper and are more likely to welcome a marketing call.

The Commission's leadership is needed also in the area of predictive dialer regulation. Newspapers use this efficiency-promoting technology in a responsible manner and have strong economic incentives to limit abandonment rates. Unreasonable restrictions on predictive dialers, such as the FTC's three-percent cap on abandonment rates, will increase costs to consumers without providing a substantial benefit. While NAA believes that no maximum abandonment rate is necessary because newspapers adequately self-regulate, a demanding, but reasonable abandonment rate is in the range of five percent.

In summary, the NAA and its members urge the FCC to take decisive but measured steps to protect consumers, newspapers and other responsible telemarketers. Thus, the FCC quickly will become the leader in national telemarketing policy by both facilitating consumer choice and protecting critical portions of the American economy. We would be pleased to meet with you or your staff to discuss these issues further.

Respectfully submitted.

A handwritten signature in black ink, reading "John F. Sturm". The signature is fluid and cursive, with the first name "John" being the most prominent part.

John F. Sturm
President & CEO
Newspaper Association of America

cc: Chairman Powell
Commissioner Abernathy
Commissioner Adelstein
Commissioner Copps
Commissioner Martin